

**ASSEMBLY BILL**

**No. 1749**

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**Introduced by Assembly Members Bonnie Lowenthal and Audra Strickland**

February 8, 2010

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An act to amend Section 8547.2 of the Government Code, relating to whistleblower protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 1749, as introduced, Bonnie Lowenthal. Whistleblower Protection Act: Administrative Office of the Courts.

The California Whistleblower Protection Act prohibits a state employee from using his or her official authority or influence for the purpose of intimidating, threatening, coercing, or commanding any person for the purpose of interfering with his or her right to make a protected disclosure, defined to include the communication of information that may evidence an improper governmental activity. The act requires the State Auditor to investigate and report on improper governmental activities, as specified. The act authorizes an employee or applicant for state employment who files a written complaint alleging reprisal, retaliation, or similar prohibited acts to also file a copy of the written complaint with the State Personnel Board, together with a sworn statement that the complaint is true, under penalty of perjury. The act provides that any person who intentionally engages in acts of reprisal, retaliation, or similar prohibited acts against a state employee or applicant for state employment for having made a protected disclosure, is subject to punishment for a misdemeanor, and shall be liable in an action for civil damages brought by the injured party. The act defines

“employee” as a person appointed by the Governor or employed or holding office in a state agency, as specified.

This bill would include a person employed by the Administrative Office of the Courts within the definition of “employee” for the purposes of the California Whistleblower Protection Act, and would provide that specified provisions of the act apply to the Administrative Office of the Courts. By expanding the scope of the crimes of perjury and the intentional reprisal, retaliation, or similar prohibited acts against a state employee, as described above, to include an employee of the Administrative Office of the Courts, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 8547.2 of the Government Code is  
2     amended to read:  
3     8547.2. For the purposes of this article, the following terms  
4     have the following meanings:  
5     (a) “Employee” means ~~any~~ *an* individual appointed by the  
6     Governor, or employed or holding office in a state agency as  
7     defined by Section 11000, including, for purposes of Sections  
8     8547.3 to 8547.7, inclusive, ~~any~~ *an* employee of the California  
9     State University, or an individual appointed by the Legislature to  
10    a state board or commission and who is not a Member or employee  
11    of the Legislature. *In addition, “employee” means a person*  
12    *employed by the Administrative Office of the Courts for the*  
13    *purposes of Sections 8547.3 to 8547.8, inclusive. “Employee”*  
14    ~~includes any~~ *a former employee who met the criteria of this*  
15    *subdivision during his or her employment.*  
16    (b) “Illegal order” means *a directive to violate or assist in*  
17    *violating a federal, state, or local law, rule, or regulation, or an*  
18    *order to work or cause others to work in conditions outside of*

1 *their line of duty that would unreasonably threaten the health or*  
2 *safety of employees or the public.*

3 ~~(b)~~

4 (c) “Improper governmental activity” means—~~any~~ *an* activity by  
5 a state agency or by an employee that is undertaken in the  
6 performance of the employee’s duties, undertaken inside a state  
7 office, or, if undertaken outside a state office by the employee,  
8 directly relates to state government, whether or not that activity is  
9 within the scope of his or her employment, and that (1) is in  
10 violation of any state or federal law or regulation, including, but  
11 not limited to, corruption, malfeasance, bribery, theft of  
12 government property, fraudulent claims, fraud, coercion,  
13 conversion, malicious prosecution, misuse of government property,  
14 or willful omission to perform duty, or (2) is economically  
15 wasteful, or involves gross misconduct, incompetency, or  
16 inefficiency. For purposes of Sections 8547.4, 8547.5, 8547.10,  
17 and 8547.11, “improper governmental activity” includes any  
18 activity by the University of California or by an employee,  
19 including an officer or faculty member, who otherwise meets the  
20 criteria of this subdivision. *For purposes of Sections 8547.4,*  
21 *8547.5, and 8547.8, “improper governmental activity” includes*  
22 *any activity by the Administrative Office of the Courts, or by an*  
23 *employee thereof, that otherwise meets the criteria of this*  
24 *subdivision.*

25 ~~(e)~~

26 (d) “Person” means—~~any~~ *an* individual, corporation, trust,  
27 association, any state or local government, or—~~any~~ *an* agency or  
28 instrumentality of any of the foregoing.

29 ~~(d)~~

30 (e) “Protected disclosure” means—~~any~~ *a* good faith  
31 communication, including—~~any~~ *a* communication based on, or when  
32 carrying out, job duties, that discloses or demonstrates an intention  
33 to disclose information that may evidence (1) an improper  
34 governmental activity, or (2)—~~any~~ *a* condition that may significantly  
35 threaten the health or safety of employees or the public if the  
36 disclosure or intention to disclose was made for the purpose of  
37 remedying that condition. Protected disclosure specifically includes  
38 ~~any~~ *a* good faith communication to the Bureau of State Audits  
39 alleging an improper governmental activity and any evidence  
40 delivered to the Bureau of State Audits in support of the allegation.

1 (e) ~~“Illegal order” means any directive to violate or assist in~~  
2 ~~violating a federal, state, or local law, rule, or regulation or any~~  
3 ~~order to work or cause others to work in conditions outside of their~~  
4 ~~line of duty that would unreasonably threaten the health or safety~~  
5 ~~of employees or the public.~~

6 (f) “State agency” is defined by Section 11000. “State agency”  
7 includes the University of California for purposes of Sections  
8 8547.5 to 8547.7, inclusive, and the California State University  
9 for purposes of Sections 8547.3 to 8547.7, inclusive. *Sections*  
10 *8547.3 to 8547.8, inclusive, shall apply to the Administrative Office*  
11 *of the Courts in the same manner as they apply to a state agency.*

12 SEC. 2. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.